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Progressive Transportation Services, Inc. and Teamsters Local 445, International Brotherhood of Teamsters, AFL-CIO. Case 3-RC-11287

November 26, 2003

DECISION AND CERTIFICATION OF RESULTS OF ELECTION

BY CHAIRMAN BATTISTA AND MEMBERS SCHAUMBER AND WALSH

The National Labor Relations Board, by a three-member panel, has considered a determinative challenge in an election held January 9, 2003, and the hearing officer's report recommending disposition of it. The election was conducted pursuant to a Stipulated Election Agreement. The tally of ballots shows 2 for and 2 against the Petitioner, with 1 challenged ballot, a sufficient number to affect the results of the election.

The Board has reviewed the record in light of the exceptions and briefs, and has adopted the hearing officer's findings and recommendations only to the extent consistent with this Decision and Certification of Results of Election.¹

The case involves a determinative challenge to the ballot of Sandra Yozzo, whose job title is "deck lead supervisor." Contrary to the hearing officer, we find that Yozzo is a supervisor within the meaning of Section 2(11) of the Act, and therefore is excluded from the bargaining unit. Accordingly, we sustain the challenge to her ballot and certify the results of the election.

I. FACTS

The Employer provides transportation services to residents of Dutchess County, New York. The Petitioner seeks to represent a unit of all full-time and regular part-time dispatchers at the Employer's Poughkeepsie, New York facility.

The Employer's operation includes a dispatching center, or Demand Service Center, also referred to as the "deck." Yozzo and the dispatchers work in the Demand Service Center. The Demand Service Center, along with certain other operational facets of the Employer's busi-

ness, is overseen by Operations Manager Janice Farinacci.

There are four dispatchers at the Employer's facility, not including Yozzo. The Employer contends that Yozzo supervises the four dispatchers. Farinacci supervises Yozzo.

The dispatchers' principal duty is to receive phone calls from local residents needing transportation. The dispatchers then coordinate transportation for those residents, either through the Employer's own buses or through independent van and cab companies.

Yozzo's title is "deck lead supervisor." Yozzo performs all of the duties performed by the dispatchers, but she also performs certain significant additional duties. Among other things, her additional duties include preparing and issuing discipline notices to the dispatchers. Yozzo then gives the notices to the disciplined employees.

The record includes 33 such notices signed by Yozzo, including "notes to file" (written notes regarding verbal counseling given by Yozzo), verbal warnings, written warnings, and two suspension notices. Each notice contains a brief narrative of the incident that resulted in the discipline. The discipline forms are signed by Yozzo and by the disciplined employee. Yozzo's signature appears on the line designated for "supervisor signature." Yozzo wrote many of the discipline notices in the first person (e.g., "If this happens again I will take further action"; "I asked you yesterday to watch your language. I asked you again today."). Yozzo sometimes presents the discipline notices to employees without any member of management present.

Although the notices in the record were prepared and signed by Yozzo, the hearing officer credited Yozzo's testimony that she does not prepare the notices independently. Rather, Yozzo brings potential disciplinary issues to Farinacci, who then tells Yozzo what level of discipline to impose and how to draft the notices. On one occasion, Yozzo disciplined an employee without first consulting Farinacci, and Farinacci rescinded that discipline.

Although the Employer did not introduce a written disciplinary policy into evidence, it appears from the discipline notices that the Employer follows a progressive policy that begins with verbal warnings and progresses to written warnings, suspension, and discharge. The vast majority of the notices are prepared on a form entitled "Employee Communication," which asks the preparer of the form to underline one of several options describing the reason for the communication: "Verbal Warning," "Written Warning," "Suspension," "Recommendation," or "Other." In at least two cases, warning

¹ The Employer has excepted to some of the hearing officer's credibility findings. The Board's established policy is not to overrule a hearing officer's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Stretch-Tex Co.*, 118 NLRB 1359, 1361 (1957). We find no basis for reversing the findings.

notices signed by Yozzo were referenced in later disciplinary action imposed against the same employee. Specifically, employee DeHart received verbal counseling and a later written warning for using bad language, both signed by Yozzo. The written warning refers back to the earlier counseling and further states that if it happens again, DeHart will be suspended. In addition, employee Mayo-Buxton received a verbal warning, written warning, final warning, and suspension (all signed by Yozzo) for rudeness to customers. Each of Mayo-Buxton's disciplinary notices referred back to the previous ones.

The Board agent challenged Yozzo's ballot because her name did not appear on the *Excelsior*² list of eligible voters. The Employer argues that Yozzo is a supervisor and therefore should be excluded from the unit. The hearing officer found that Yozzo was not a supervisor and recommended overruling the challenge to her ballot. The Employer excepts, arguing in part that Yozzo exercised independent judgment to effectively recommend discipline of the dispatchers. For the reasons set forth below, we agree with the Employer. Accordingly, we reverse the hearing officer and sustain the challenge to Yozzo's ballot.³

II. LEGAL FRAMEWORK

Section 2(11) of the Act defines "supervisor" to mean:

Any individual having the authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibly to direct them, or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing, the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment.

The possession of any one of the indicia specified in Section 2(11) is sufficient to confer supervisory status, as long as the authority is carried out in the interest of the employer and requires the exercise of independent judgment. *Arlington Masonry Supply, Inc.*, 339 NLRB No. 99, slip op. at 2 (2003); *Heartland of Beckley*, 328 NLRB 1056 (1999). The burden of proving that an individual is a supervisor rests on the party alleging such status. *Arlington Masonry*, supra, slip op. at 2.

III. ANALYSIS

Applying these principles to the facts of this case, we find that the Employer has carried its burden of proving

that Yozzo possesses supervisory authority within the meaning of Section 2(11). Specifically, contrary to the hearing officer, we find that Yozzo exercises independent judgment to effectively recommend discipline to Farinacci.⁴

In rejecting the Employer's argument that Yozzo effectively recommends discipline, the hearing officer credited Yozzo's testimony that she first discusses potential disciplinary issues with Farinacci, and Farinacci instructs her as to the level of discipline and how to draft the notice. The hearing officer therefore found that the Employer failed to prove that Yozzo used independent judgment to discipline employees.

We disagree. The credited testimony shows that, even if Yozzo does not issue discipline entirely on her own, she uses independent judgment to effectively recommend discipline to Farinacci. As explained below, the record shows that when Yozzo makes a disciplinary recommendation to Farinacci, discipline is in fact imposed. Furthermore, Yozzo has the authority to decide whether a dispatcher's conduct warrants a discipline recommendation to Farinacci at all, or whether Yozzo should simply handle the matter herself with a verbal reprimand. Finally, in addition to Yozzo's authority to effectively recommend discipline, Yozzo possesses secondary indicia of supervisory status that further support our finding that she is a statutory supervisor.

A. Authority to Effectively Recommend Discipline

First, Yozzo effectively recommends discipline to Farinacci when she brings rule infractions and misconduct to Farinacci's attention, thereby initiating the discipline process. When Yozzo decides to bring a disciplinary issue to Farinacci, Farinacci does not conduct an independent investigation of the incident.⁵ Rather, Farinacci decides the level of discipline and advises Yozzo on the wording of the discipline notice based on the incident as Yozzo describes it. The 33 disciplinary notices in the record signed by Yozzo establish that Farinacci follows Yozzo's recommendations; that is, when Yozzo decides that a potential disciplinary issue should be brought to Farinacci's attention, discipline ensues. Discipline of the dispatchers therefore begins with Yozzo's recommendation to Farinacci. Accord-

⁴ Yozzo's authority may be even broader. The evidence indicates that Farinacci decides the *level* of discipline. Thus, under this view, Yozzo makes the decision that discipline is warranted, and Farinacci decides the level of discipline.

⁵ There is one exception in the record. In a written warning to employee Katrina Davis regarding a customer complaint, Yozzo stated that "after a thorough investigation by Jan [Farinacci], we decided" to issue a written warning. For the other 32 instances of discipline in the record, there is no evidence of an independent investigation by Farinacci.

² *Excelsior Underwear*, 156 NLRB 1236 (1966).

³ Because we find that Yozzo is a supervisor on the basis that she effectively recommends discipline, we need not pass on the Employer's arguments that Yozzo also has the authority to suspend, reward, assign work, responsibly direct employees, and adjust grievances.

ingly, although Yozzo does not unilaterally impose discipline without consulting Farinacci first, Yozzo does effectively recommend discipline. See *Venture Industries*, 327 NLRB 918, 919 (1999) (authority to discipline found where employees in question issued oral and written reprimands and recommended suspensions as part of progressive discipline system, and those recommendations were followed 75 percent of the time).

A related facet of Yozzo's authority to effectively recommend discipline is her authority to decide whether to handle potential discipline issues herself informally instead of bringing them to Farinacci's attention. Based on Yozzo's discretion, incidents that otherwise would likely have resulted in discipline are resolved outside of any disciplinary process. For example, although several disciplinary notices in the record involved foul language and personal phone calls, Yozzo testified that she does not bring every instance of foul language or personal calls to Farinacci's attention. Instead, Yozzo sometimes decides to simply tell the employee to stop the offending behavior. Yozzo, therefore, uses independent judgment in deciding whether to initiate the discipline process by bringing improper conduct to Farinacci's attention, or to handle the matter herself by informally counseling the employee.⁶

In finding that Yozzo effectively recommends discipline, we disagree with the position taken by the hearing officer and our dissenting colleague that the disciplinary notices prepared by Yozzo failed to affect employees' job status. As explained above, the very format of the notices shows that the Employer follows a progressive system. Furthermore, in at least two cases, warning notices signed by Yozzo were referenced in later discipline imposed against the same employee. In one of those cases, involving rudeness to customers, the employee was ultimately suspended. The suspension notice was signed by Yozzo and referenced Yozzo's prior warnings to that employee. Yozzo also signed another suspension notice for excessive "lates."⁷

⁶ We are not holding that a decision to *refrain* from recommending discipline would itself establish supervisory status. We do not pass on that issue. Rather, we simply observe that Yozzo's recommendations to discipline were discretionary choices.

Our dissenting colleague dismisses this aspect of Yozzo's authority as nothing more than the verbal correction of employees' behavior, which the Board has found insufficient to show supervisory authority. In our view, however, the significance lies not in the verbal correction itself, but the independent judgment Yozzo exercises in deciding whether to invoke the disciplinary process by bringing the issue to Farinacci, *instead of* resolving the incident through informal verbal correction.

⁷ Citing *Vencor Hospital*, 328 NLRB 1136 (1999), and *Ken-Crest Services*, 335 NLRB 777 (2001), our colleague also argues that the evidence fails to show that the Employer's discipline policy included an

Our colleague suggests that authority as to discipline is supervisory only when it *automatically* leads to an action affecting employment. We disagree. As discussed above, the cases do not so hold. Further, the argument does not comport with industrial practicality. If our colleague were correct, the imposition of discipline would be supervisory only if there is a rigid and inflexible system under which discipline always leads to a precise impact on employment. In our view, it is sufficient that the discipline has the real potential to lead to an impact on employment.

Our dissenting colleague would further find that Yozzo's authority is merely reportorial and does not require independent judgment, because she brings discipline issues to Farinacci rather than issuing discipline unilaterally. However, Section 2(11) requires only that a supervisor have the authority to "effectively recommend" discipline—not that he or she have the final authority to impose it. Considering the absence of independent investigation by Farinacci and the myriad notices showing that Yozzo's recommendations to Farinacci do in fact result in discipline, we find that the record amply demonstrates that Yozzo "effectively recommends" discipline to Farinacci.⁸

"automatic" progression from mere warnings to further discipline or suspension. Therefore, our colleague argues that Yozzo's warnings did not affect employees' job status.

We find *Vencor* and *Ken-Crest* distinguishable. In *Vencor* and *Ken-Crest*, the Board declined to find that the issuance of verbal warnings established supervisory authority. In doing so, the Board noted that the verbal warnings did not "automatically" lead to further discipline. However, in *Vencor*, the Board specifically noted that there was no evidence that the disputed individuals ever recommended suspension. In the present case, Yozzo recommends discipline, and that discipline has led to suspension. Furthermore, in discussing the verbal warning reports issued by the employees in *Vencor*, the Board found that there was "no evidence as to what role these reports play in any discipline that may be imposed." 328 NLRB at 1139. Similarly, in *Ken-Crest*, there were no written warnings in evidence that referred back to the previous verbal warnings issued by the employees in question. 335 NLRB at 778. As noted above, the record in the present case contains disciplinary notices—including a suspension—that reference Yozzo's prior warnings, showing that those warnings did play a role in later discipline.

⁸ Our colleague contends that there is no evidence that Yozzo makes a specific discipline "recommendation" when she brings potential discipline issues to Farinacci. We find that such a recommendation is implicit in the very system followed by Yozzo and Farinacci: Yozzo decides whether an incident should be reported to Farinacci for discipline, or simply handled with an informal reprimand by Yozzo herself. By deciding to bring the issue to Farinacci's attention—which, the discipline notices show, results in discipline being imposed—Yozzo is making a recommendation.

Similarly, our colleague says that Yozzo does not make any "particular recommendation". However, the fact that Yozzo does not recommend a particular form of discipline does not undercut the fact that she recommends discipline. And, as the dealings between Farinacci

We further note that the cases cited by our dissenting colleague regarding merely “reportorial” authority are distinguishable. In *Feralloy West Co.*, 277 NLRB 1083, 1084 (1985), the only types of discipline notices signed by the employee in question involved attendance violations. The Board found that the employee merely performed the clerical function of tracking employee attendance and notifying the plant manager when an employee reached a level of attendance infractions that required discipline according to the company’s established guidelines. Similarly, in *Fleming Cos. Inc.*, 330 NLRB 277 fn. 1 (1999), on all but one occasion the employee in question simply recorded instances of tardiness and absences, which resulted in a standard preprinted discipline form being automatically generated elsewhere. On the one occasion the employee signed a disciplinary warning himself, the warning was signed by two managers in addition to the alleged supervisory employee, and contained no disciplinary recommendation by the alleged supervisory employee. In the present case, although many of the discipline notices signed by Yozzo did involve “lates,” others involved different types of misconduct, such as bad language and rudeness to clients. Furthermore, Yozzo admitted that she sometimes decided to handle misconduct on her own rather than bringing it to Farinacci’s attention. There is no evidence that the alleged supervisors in *Feralloy West* and *Fleming* exercised such discretion. In *Ken-Crest Services*, supra, the employees in question issued only verbal warnings, and no written warnings were placed in evidence that even referred back to previous verbal warnings. Therefore, the Board found that the employer failed to show that any actual consequences flowed from the verbal warnings. In the present case, Yozzo issued not only verbal warnings, but also written warnings and suspensions. There are at least two instances in the record in which warning notices signed by Yozzo were referenced in later disciplinary action imposed against the same employee.

Our dissenting colleague further emphasizes that the record shows only one instance in which Yozzo issued discipline unilaterally (that is, without consulting Farinacci), and that Farinacci rescinded that discipline. This isolated example, however, does not detract from the evidence that in 33 other instances Yozzo recommended discipline and Farinacci approved it. Yozzo consulted Farinacci on disciplinary issues on numerous occasions. As explained above, the record shows 33 disciplinary notices signed by Yozzo. Our colleague says that the rescission shows that Yozzo has no author-

ity to recommend discipline. We believe that this is a classic non sequitur. The fact that the discipline was rescinded shows only that Yozzo has no authority to impose discipline by herself. This has nothing to do with the fact that she can effectively recommend discipline.

B. Secondary Indicia of Supervisory Status

In addition to her authority to effectively recommend discipline, Yozzo possesses several secondary indicia of supervisory authority. Yozzo is listed on the Employer’s organizational charts as a supervisor and has a business card identifying her as “deck lead supervisor.” No other dispatchers have business cards. Yozzo received a raise of about \$2 per hour (a substantial raise at this Employer) when she was promoted from dispatcher to deck lead supervisor. Yozzo is paid more than all of the other dispatchers except one, who has lengthy tenure with the Employer and who formerly worked for the Employer in a more highly paid position than dispatcher. Also, Yozzo introduced herself to the Employer’s current General Manager as the supervisor of the dispatchers, and referred to the dispatchers as her staff.

C. Conclusion

For all the foregoing reasons, we find that Yozzo is a statutory supervisor within the meaning of Section 2(11). Accordingly, we sustain the challenge to Yozzo’s ballot and certify the election results.

CERTIFICATION OF RESULTS OF ELECTION

IT IS CERTIFIED that a majority of the valid ballots have not been cast for Teamsters Local 445, International Brotherhood of Teamsters, AFL–CIO, and that it is not the exclusive representative of these bargaining unit employees.

Dated, Washington, D.C., November 26, 2003

Robert J. Battista, Chairman

Peter C. Schaumber, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

MEMBER WALSH, dissenting.

Contrary to my colleagues, I agree with the hearing officer that the challenge to Deck Lead Supervisor Sandra Yozzo’s ballot should be overruled. I find that the Em-

and Yozzo make clear, Yozzo goes to Farinacci for the purpose of effectuating discipline of some kind.

ployer failed to prove that Yozzo uses independent judgment to effectively recommend discipline.¹

As my colleagues recognize, the burden of proving that an individual is a supervisor is on the party alleging such status. *Arlington Masonry Supply, Inc.*, 339 NLRB No. 99, slip op. at 2 (2003). In my view, the Employer has failed to carry that burden.

My colleagues concede that Yozzo does not issue discipline independently. They further concede that according to the credited testimony, Yozzo reports rule infractions and other misconduct to Operations Manager Farinacci, and it is Farinacci—not Yozzo—who then decides whether to impose discipline and instructs Yozzo how to prepare the discipline notices. The hearing officer specifically credited Yozzo’s testimony that on the one occasion that Yozzo imposed discipline on her own, without coming to Farinacci first, Farinacci rescinded the discipline.

Nevertheless, my colleagues find that Yozzo uses independent judgment to effectively recommend discipline. In doing so, they rely heavily on the discipline notices in the record that contain Yozzo’s signature. They reason that the notices show that when Yozzo reported incidents of misconduct to Farinacci, discipline ensued. I disagree. The credited evidence shows only that Yozzo reported incidents to Farinacci, and Farinacci made the decision whether and how to discipline the employee. Other than simply reporting the incidents, the record does not show that Yozzo made any particular recommendation to Farinacci that discipline be imposed. Therefore, in my view, the record fails to show that Yozzo effectively “recommended” any discipline to Farinacci. Rather, Yozzo’s role in the discipline process was simply reportorial: she reported misconduct and rule infractions to Farinacci, Farinacci decided whether to impose discipline and in what form, and Yozzo completed and signed the discipline notices pursuant to Farinacci’s instructions. The Board has held that this type of reportorial authority does not establish supervisory status. See *Ken-Crest Services*, 335 NLRB 777, 778 (2001) (program managers were not supervisors, because their “limited role in the disciplinary process is nothing more than reportorial”); *Fleming Cos.*, 330 NLRB 277 fn. 1 (1999) (supervisory status not found where employee communicated discipline only pursuant to management’s directive; employee’s role as a “mere conduit” for management was insufficient evidence of independent judgment); *Feralloy*

West Co., 277 NLRB 1083, 1084 (1985) (employee who recorded employee attendance and brought employee records to management for a decision on whether to reprimand for attendance violations was not a supervisor).

Furthermore, the overwhelming majority of the discipline notices signed by Yozzo are verbal or written warnings. In my view, the Employer failed to show that these warnings had any actual effect on employees’ job status. Where an employer follows a progressive discipline system and an employee alleged to be a supervisor has issued warnings, the Board has nevertheless refused to find supervisory authority where there is no evidence of an *automatic* progression from those warnings to further discipline. See *Vencor Hospital*, 328 NLRB 1136, 1139 (1999) (even though employer followed progressive discipline system, registered nurses’ written reports of verbal warnings did not establish supervisory authority; there was no evidence that the reports automatically led to suspension or termination or otherwise affected job status); see also *Ken-Crest Services*, supra, at 778 (verbal warnings did not establish supervisory authority; there was “no formal policy concerning how many verbal warnings will warrant issuance of a written warning,” and thus “no automatic progression from a verbal warning to a written warning”). In the present case, although the Employer appears to have followed some sort of progressive discipline policy, that policy was not introduced into the record. There was testimony that the progression from warnings to suspension was fixed and automatic for “lates.”² However, the progression for other types of infractions is unclear. Although some discipline notices in the record do suggest a progression (e.g., “This is considered a verbal warning[;] the next will be written warning”), others suggest that the progression is *not* automatic. For example, one employee received a warning notice for an incident involving a customer complaint. The notice was designated as a “final written warning” and stated that the next offense “could” be suspension or termination—suggesting that the consequences of the next offense were not rigidly fixed. Another employee received several verbal and written warnings for rudeness to customers. One warning stated, “Our policy states

¹ I further agree with the hearing officer, for the reasons stated in his report, that the Employer failed to prove that Yozzo possesses any of the other primary indicia of supervisory authority listed in Section 2(11) of the Act.

² Although the Employer does appear to follow an automatic progression in cases involving “lates,” I would not find that discipline notices issued for “lates” are sufficient to show supervisory authority. As the hearing officer found, the evidence shows that Yozzo’s role in the disciplinary process for “lates” was routine and clerical: she kept track of the dispatchers’ tardiness and reported it to Yozzo, but the level of discipline to be imposed was predetermined by the employer’s policy. See *Feralloy West*, supra, 277 NLRB at 1084 (supervisory authority not shown where employee simply maintained attendance records under established attendance program and informed management when employees reached a certain number of infractions).

that a second offense is sufficient cause for your discharge. These are your fourth and fifth offenses.” Yet, the only discipline imposed for the fourth and fifth offenses was the warning itself. Not until the sixth offense was the employee even temporarily suspended. Therefore, the record fails to show an automatic progression from warnings to suspension or termination, and accordingly fails to show that the warnings signed by Yozzo affected employees’ job status.³

My colleagues also concede that Farinacci overruled the one discipline notice Yozzo issued on her own, but they find that this does not detract from the fact that Farinacci followed Yozzo’s recommendation in 33 other instances. I disagree. First, as explained above, the evidence does not show that Yozzo made any particular discipline recommendation when she reported incidents to Farinacci. Second, in my view, the fact that Farinacci promptly rescinded the only discipline initiated by Yozzo herself shows that Yozzo did *not* have the authority to effectively recommend discipline.

My colleagues further find that Yozzo has authority to decide whether to bring misconduct or rule infractions to Farinacci’s attention, or to handle them herself informally. They note that although several disciplinary notices in the record involve foul language and personal phone calls, Yozzo testified that she does not bring every instance of foul language or personal calls to Farinacci’s attention. Instead, Yozzo sometimes decides to simply tell the employee to stop the offending behavior. Therefore, they find that Yozzo uses independent judgment in deciding which potential disciplinary issues to present to Farinacci. I disagree. First, my colleagues cite no Board precedent for this conclusion. Second, the evidence on which they rely shows, at most, that Yozzo sometimes verbally reprimands employees who engage in inappropriate

conduct. This is insufficient to establish supervisory authority. See *Crittenton Hospital*, 328 NLRB 879, 880 (1999) (pointing out and correcting deficiencies in employees’ work does not establish authority to discipline); *Passavant Health Center*, 284 NLRB 887, 889 (1987) (“merely issuing verbal reprimands is too minor a disciplinary function to be statutory authority”). Finally, my colleague’s view is contrary to the well-established rule that authority to merely report misconduct does not prove supervisory status. See *Ken-Crest Services*, supra, slip op. at 2. If merely reporting misconduct to management is insufficient to show supervisory status, then the occasional failure to report must also be insufficient.

Finally, my colleagues find that Yozzo possesses several secondary indicia of supervisory status. Because the Employer has failed to show that Yozzo possesses any primary indicia of supervisory authority, I would not rely on secondary indicia. See *Ken-Crest Services*, supra at 779 (In the absence of evidence that an individual possesses any of the primary indicia of supervisory status enumerated in Section 2(11), “secondary indicia are insufficient by themselves to establish supervisory status.”). In any event, even if reliance on secondary indicia were appropriate here, I do not agree that the secondary indicia in the present case clearly indicate supervisory status. For example, as my colleagues concede, one of the dispatchers allegedly supervised by Yozzo is more highly paid than Yozzo. The Employer’s other supervisors are salaried, but Yozzo is paid on an hourly basis. Further, while one dispatcher testified that she viewed Yozzo as her supervisor, another testified that she considered Yozzo to be only her “lead,” and not her supervisor.

For the foregoing reasons, I agree with the hearing officer that the Employer failed to prove that Yozzo is a statutory supervisor. Therefore, I would overrule the challenge to Yozzo’s ballot.

Dated, Washington, D.C., November 26, 2003

Dennis P. Walsh,

Member

NATIONAL LABOR RELATIONS BOARD

³ In addition to verbal and written warnings, Yozzo’s signature does appear on two suspension notices. However, I would not find that these suspension notices prove that Yozzo effectively recommended discipline that affected employees’ job status. One suspension was for excessive “lates.” As explained above, Yozzo’s role in discipline for “lates” was routine and clerical. The other suspension was for rudeness to customers. However, there is nothing to suggest that this notice was generated any differently from the other notices in the record: that is, Yozzo merely reported the misconduct to Farinacci, and Farinacci instructed Yozzo whether to issue a discipline notice. Therefore, the record does not show any independent judgment by Yozzo in connection with the suspension notices.